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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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| ROYA HOSSEINZADEH,<br>Plaintiff and Appellant,<br>v.<br>CHAMPPS ENTERTAINMENT, INC.,<br>Defendant and Respondent. | G029756<br>(Super. Ct. No. 00CC12056)<br>O P I N I O N |

Appeal from a judgment of the Superior Court of Orange County, David H. Brickner, Judge. Reversed.

Law Offices of David P. Crandall and David P. Crandall for Plaintiff and Appellant.

Hayes Simpson Greene, Douglas P. Smith and Chad C. Wilcox for Defendant and Respondent.

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THE COURT:*

Roya Hosseinzadeh filed a complaint for personal injuries as a result of a slip and fall in a restaurant owned by Champps Entertainment, Inc. The restaurant's motion for summary judgment was granted. Because there is a triable issue of material fact, we reverse.

I

Hosseinzadeh alleged she was injured when she slipped and fell on a liquid that had been spilled on the restaurant's floor. She alleged the spill was a "dangerous condition" and it had been caused by one or more of the restaurant's employees who had either negligently caused it or failed to clean it up.

In due course, Champps filed a motion for summary judgment arguing there was no negligence because Hosseinzadeh did not, and could not, adduce any evidence the restaurant had actual or constructive notice of the spill. Hosseinzadeh countered that where an employee is responsible for creating the dangerous condition, knowledge of the dangerous condition is imputed to the owner. In support of this argument, she cited the testimony of Jennifer Michaud, the restaurant's witness with respect to the owner's serving and busing procedures, that because employees carried drinks from the bar to the tables they would be a likely source of the spill. The restaurant countered that because of the configuration of the restaurant and bar, it was just as likely that a customer spilled the liquid.

The court granted the motion. It stated there was no evidence concerning "the length of time the spill had been on the floor, which means no triable issue of fact has been interposed raising the possibility of negligence by the defendant in failing to properly react to the danger presented by the spill. If we have no idea how long the spill was there, an essential element of plaintiff's case—the negligent failure of the defendant

* Before Sills, P. J., Rylaarsdam, J., and O'Leary, J.

to clean up the spill—cannot be shown (Bridgeman [*sic*] vs Safeway Stores (1960) 53 Cal2nd 443). For this reason, the motion for summary judgment must be, and hereby is, granted."

II

Hosseinzadeh concedes she has no evidence of how long the spill was on the floor. She argues, however, that because a restaurant employee likely caused the spill the owner was presumptively on notice and thus the failure to promptly clean it up was negligence.

There is no direct evidence a restaurant employee, rather than a customer, caused the spill. Hosseinzadeh concedes this. But in the deposition testimony of Champps' employee, Jennifer Michaud, she testified that if company procedures were properly followed, the only way a liquid could get on the floor was if it were spilled by a server or buser. We recognize that in *Brown v. Poway Unified School Dist.* (1993) 4 Cal.4th 820, the court stated that "'something slippery on the floor affords no res ipsa case against the owner of the premises, unless it is shown to have been there long enough so that he should have discovered and removed it.'" (*Id*. at p. 826.) And the plaintiff cannot meet that burden merely by proving he or she "'stepped on something . . . and thereby was caused to fall and receive injuries, for "[n]o inference of negligence arises based simply upon proof of a fall upon the owner's floor."'" (*Id*. at p. 827.)

In *Brown*, an independent computer repairman was delivering computers to the school district when he slipped and fell on some lunch meat that "might have been dropped by an employee," "a visitor," or brought on site by some other means. In rejecting any claim of negligence, the Supreme Court noted that "[s]ome of these explanations do not presuppose negligence, and none is inherently more probable than the others." (*Id*. at p. 827; see also *Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1208-1211.) But unlike *Brown*, here there was evidence it was more probable than not that the spill that caused Hosseinzadeh to fall was caused by a restaurant employee serving or

busing drinks. Given this explanation is more probable than the one offered by the restaurant, that a customer caused the spill, Hosseinzadeh met her duty to show there was a triable issue of material fact.

Accordingly, the judgment is reversed. Appellant shall recover her costs on appeal.